



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1996

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Office of the Comptroller of Public Accounts
LBJ State Office Building
111 East 17th Street
Austin, Texas 78774

OR96-0117

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38125.

The Comptroller of Public Accounts (the "comptroller") received a request for information in which the requestor seeks a copy of his personnel file and any papers or memoranda which contain his name. The comptroller has provided the requestor with all information that the requestor has previously seen. You have submitted to this office copies of all documents responsive to the request that the requestor has not seen. You assert that these documents are excepted from disclosure by section 552.103 of the Government Code.¹

Section 552.103(a) excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The comptroller has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the comptroller must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have referenced an EEOC complaint for age discrimination filed by the

¹We note that a public employee has no special right of access entitling him to inspect his own personnel file. Open Records Decision No. 444 (1986). An employee's right to inspect his personnel file is coextensive with the right of the public to do so. *Id.*

requestor. The pendency of an EEOC complaint indicates a substantial likelihood of litigation. Open Records Decision No. 386 (1983). You have shown how the requested information relates to anticipated litigation. Therefore, you may withhold the information under section 552.103.

We note that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982). Of course, the comptroller has discretion to release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 38125

Enclosures: Submitted documents

cc: Mr. John J. Tibiletti
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(w/o enclosures)